STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,181
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a forty-two-year-old woman with a ninth-grade education. Until 1989 the petitioner worked steadily, holding a succession of jobs, including nurses aid, factory work, and clerking at a store and a motel.

In June 1989, the petitioner was involved in a car accident, sustaining injuries to her ankle and neck. Shortly after the accident a chiropractor diagnosed her neck problem as follows:[1]

> It is my opinion, after review of the history, extensive examination, radiographic and thermographic findings, that this patient had sustained the following injuries as a direct result of the accident:
>
> > 1. An acute lateral hyperflexion trauma resulting in moderate sprain of the cervical spine and rupture or stretch of the retaining ligaments of the spine with enthesopathy, primarily moderate-severe

> myofascial damage and capsulitis of the cervical joints.
>
> 2. Compression trauma of the cervical roots from probable accordionpleat syndrome.
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> 3. Cervical-cranial syndrome.
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> 4. Occipital nerve compression syndrome.
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> 5. Mild thoacic sprain with myofascitis.
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> [Petitioner] was instructed to rest in a comfortable position as much as possible with ice therapy to the cervical and dorsal regions for 20-30 minutes every 2 hours for the first three days and then to continue at least 3-4 times per day. She was not to do any lifting, stretching, bending, or to perform any activities which increased pressure to the spine. She was given a cervical orthosis to sleep on and she was to continue using the cervical collar in an intermittent nature. Due to the severity of the injury [petitioner] was informed she would not be able to work for at least several weeks.

The petitioner has continued to see the chiropractor on a regular basis. In April 1990, the chiropractor offered the following conclusion to a lengthy report:[2]

> It is obvious that [petitioner] continues to suffer residual effects from the trauma suffered in the accident of 6-6-89. Using the Guides it is found that [petitioner] has suffered a permanent partial impairment which is rated at 16%, or when rounded, equals a 15% whole person permanency.
>
> At this time, [petitioner] still can not perform any light physical work without intense exacerbation to her neck. [Petitioner] finds that she can not read for any length of time before her neck begins to stiffen and becomes painful. [Petitioner] frequently awakens with intense pain which requires treatment for palliative relief. Recently, [petitioner] tried to bowl one evening which triggered an intense myofascial pain response which required two weeks of treatment to settle down. I don't anticipate that [petitioner] will be able to enjoy much of the same activities that she did prior to this accident. She needs to be very

> careful with her activities as mild strain triggers off intense myofascial pain responses. In addition, use of her arms or positioning of her neck tends to aggravate the ligament injury in her neck which then triggers off another pain syndrome. At the time of this report, [petitioner] has not been able to extend any visits beyond two weeks before requiring palliative care for pain relief. I honestly don't think this will improve too much in the future. I would hope that with the passage of time [petitioner] will only require care monthly. I would expect that to occur within a year from now. As far as work is concerned, it is highly improbable that she will be able to do any work which requires her to use her arms or neck in a straining position or repetitious work which requires her to turn, bend, or rotate her neck. Obviously, she is not able to do any physical kind of work. Perhaps in the future as her neck gradually strengthens she will be able to do light physical work.

Unfortunately, however, the petitioner's problems have not improved. In July 1990, the petitioner's Vocational Rehabilitation counselor offered the following assessment of that agency:

> [Petitioner] applied for Vocational Rehabilitation services in October 1989. [Petitioner] has been very compliant with all requests and appointments to the best of her physical ability.
>
> It has taken us eight months to complete her assessment due to her chronic neck pain, ankle problem and unstable diabetic condition.
>
> Due to [petitioner's] strong aptitudes, as measured 3/21/90 with the SAGE, it would appear that she is very trainable, but with the severe pain caused by movement in her neck from every day activities, she is too unstable to train at this time. [Petitioner's] neck pain, combined with a limited standing and hand/eye/foot coordination problem, she is not, in my opinion, trainable at this time.
>
> I would very much support a granting of [petitioner's] SSI and/or SSDI with a <u>one</u> year medical review date.

In July 1990, a consultative physician (an internist) examined the petitioner at the request of DDS. He noted that the petitioner complained of severe neck pain "if she

tries to do minimal activities" and "persistent ankle pain". His examination revealed that the petitioner "cannot bear weight on the left ankle and she cannot walk without limping" and that "the head and neck have approximately 75% limitation of flexion and rotation of right and left".

In February 1991, the petitioner underwent a consultative psychological examination. In an extensive report, the physiologist essentially fully credited the petitioner's complaints of pain.[3] Her "conclusions and recommendations" were as follows:

> The above data indicate that this woman is experiencing significant psychological distress secondary to the pain and limitations imposed by her injury. It does not appear that this woman has been instructed in adequate coping strategies to deal with this pain. She has been primarily treating this pain as if it were acute rather than a chronic condition.
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> The following DSM III-R diagnostic configuration is suggested by the current data:
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> | Axis I | 311.00 | Depressive Disorder, Not Otherwise Specified. |
> | Axis II | V71.09 | No Diagnosis on Axis II. |
> | Axis III | | Chronic Pain Syndrome. |
> | Axis IV | 3 | Severity of Psychological Stress - Moderate. |
> | Axis V | | Global Assessment of Functioning Scale (GAF)
Current: 60.
Highest: 60. |
>
> Although this woman does not currently meet the criteria for a major depressive disorder, she is at serious risk of developing such a disorder. It is strongly recommended that she discuss her mood and persistent thoughts of suicidal ideation with her physician who might consider increasing her Prozac. It is also recommended that concurrent with this, the

> client participate in psychotherapy. It is likely that this woman's affective state is negatively affecting her ability to cope with her chronic pain. It would also likely benefit this woman if she were instructed in cognitive-behavioral strategies to cope with her pain.

That same month, February 1991, the petitioner also underwent a consultative neurological assessment. The neurologist diagnosed the petitioner's neck problem as "chronic cervical strain", but his examination of her neck was essentially negative from a neurologic viewpoint. He noted that the petitioner "didn't seem to be that uncomfortable or limited in the neck area on this examination".

Also noted in all the medical reports is that the petitioner also suffers from chronic obesity and diabetes.

Based on the above reports it is found that the petitioner is severely limited in her physical activities. Clearly, she cannot be on her feet for any significant length of time. Despite the limited findings of the neurologist, there is also substantial medical evidence that the petitioner's complaints of neck pain are credible, i.e., that her neck problems limit her ability to turn her head and to look up or down without severe pain.[4] This would limit the petitioner to sedentary work that did not entail movement of the petitioner's head and neck. The Department (which was given time to assess its position in light of

this finding) did not offer any evidence as to whether, or in what numbers, there were jobs available that would accommodate these restrictions.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

> Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, the petitioner's limitations, as found above, preclude her performing anything but sedentary work that does not involve substantial head movements. Inasmuch as none of the petitioner's past work appears to fall within these restrictions, and insofar as there is no evidence that any other jobs would either, it must be concluded that the petitioner meets the above definition of disability. The Department's decision is, therefore, reversed.

FOOTNOTES

[1] In a report dated April 30, 1990, the chiropractor reviewed and reiterated the diagnosis he had made shortly

after the petitioner's accident. The quoted diagnosis, made in June, 1989, was taken from the April, 1990 report.

[2]This portion of the chiropractor's report appears to be based on his assessment of the petitioner as of March, 1990.

[3]The psychologist's report contains the following "self-report of pain symptoms":

> [Petitioner] gave the foci of her pain as her neck, head and left ankle. She described her pain as aching and deep. The client also added that she has been experiencing bilateral leg pain for four to five weeks and described this pain as cramping. [Petitioner] wonders if this pain may be related to her diabetes. When asked to rate the overall intensity of her pain on a scale of zero (none) to ten (severe), she rated it as a four. Her peak level of pain was reported as a twelve. [Petitioner] was asked about the frequency and duration of her pain and reported that she has daily pain but that the site of the pain varies.
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> With respect to what worsens her pain, the client said that arm movements, different sleeping postures, bending, and doing housework which requires bending and lifting intensifies it. As this point of the interview, [petitioner] began quietly crying. This woman was asked to indicate what might lessen her pain and replied that ice or, at times, heat lessens it, and the traction that she receives weekly from the chiropractor also helps. She said that if she takes her pain medication which is Tylox, that also helps because it makes her sleep.
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> When asked what her pain prevents her from doing, [petitioner] said that it sometimes interferes with her doing her housework, that she is unable to do knitting and crocheting which she had previously enjoyed, and that she is unable to read because she cannot keep her head down. She elaborated further saying that she is unable to bowl and that she and her husband had been quite avid about that sport. Her sexual relationship with her husband has decreased significantly since her accident. She also has noted a change in her relationship with friends since she is unable to engage in many of the activities that they had previously enjoyed together. [Petitioner] did say that she has tried to substitute other activities such as bingo and card playing but that bending her head down intensifies her head and neck pain.

> The client was queried as to how her family reacts in response to her pain. She said that her husband is very supportive. When asked how he demonstrated his support, [petitioner] said that he does not insist that she keep up the household chores as she used to in the past. The client was asked if her husband helps with these chores and replied that he does not believe that is his job.

[4]The petitioner's cooperativeness and motivation are well-documented in the record. It is hoped that with Medicaid the petitioner will heed the advise of the psychologist (supra) and seek therapy to help her cope with what-unfortunately-appears-will-be a chronic situation, and that the petitioner will eventually be able to return to the workforce.

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